IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.492/06

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 13th September, 2006

Heard Shri V.A. Kothale, learned counsel for the appellant.

2. This Second Appeal is preferred against the Judgment and decree dated 20.3.2006 passed by the Additional District Judge, Amravati in Regular Civil Appeal No. 179/98 dismissing the appeal filed by the appellant against the Judgment and decree dated 20.12.1995 passed by the Civil Judge, Jr. Dn., Warusd in Regular Civil Suit No. 191/89.

3. Respondent no.1 filed the above civil suit against the appellant herein and respondent no.2 for partition and separate possession in respect of the suit field and suit house. The trial Court upon appreciation of the evidence held that the plaintiff was entitled to 4/9th share in the suit field and half share in the suit house. Defendant no.2 was granted 1/9th share in the suit field only and she was not granted any share in respect of the suit house. The appellate court concurred with the

findings given by the trial court and dismissed the appeal filed by the appellant against the Judgment and decree passed by the trial Court.

4. Mr. Kothale, learned counsel appearing for the appellant submitted that both the courts below failed to consider that earlier there was oral partition between the parties and, therefore, the plaintiff was not entitled to any share in the suit house and the suit field. He further submitted that the suit filed was barred by limitation having been filed much beyond the period of limitation after the oral partition. He further submitted that both the courts below have not properly assessed the shares in respect of the suit field and suit house. Lastly, he submitted that the appellate Court has not considered the issue of limitation raised by the appellant in the Memo of Appeal as well as during arguments.

5. I have considered the submissions made by the learned counsel so also perused the records. In my opinion, the trial Court was absolutely justified in not accepting the plea of the appellant that there was oral partition and since the lower appellate Court concurred with the findings given by the trial court it was not necessary for the lower appellate court to elaborately deal with the said issue. In so far as the allotment of shares is concerned, in my opinion, no fault could be found with both the courts below inasmuch as the

findings about the entitlement and allotment of the shares to the parties are based upon the proper appreciation of the evidence led by the parties. So far as the issue of limitation is concerned no issue appears to have been framed by the trial court in view of the fact that the same was not pleaded by the appellant. It is pertinent to note that in the Judgment passed by the lower appellate Court there is no reference about the issue of limitation having been raised and, therefore, it has to be presumed that no such point was urged before the lower appellate Court. Even otherwise both the courts below having rejected the defence of the appellant that there was oral partition the suit being primarily for partition cannot be held to be barred by limitation since the plaintiff was entitled to seek partition of the property.

6. Upon perusal of the records I am satisfied that the trial court as well as appellate Court were justified in passing the impugned Judgments and decrees. I do not find any merit in the submissions made by the learned counsel. In my opinion, no substantial question of law is involved in the appeal. The appeal, therefore, is summarily rejected.

Judge

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